# *Registered Charities Newsletter*

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## From the Director General

Not everyone realizes that 15% of all Canadian registered charities report that they engage in activities outside of Canada. Recognizing the importance of this work, the Government of Canada has made a commitment to sharing information on best practices at an international level.

This newsletter includes facts and figures about charities that work outside Canada. The newsletter also addresses some of the questions that we at the Canada Revenue Agency have received through email to the *Registered Charities Newsletter*, through the Charities Advisory Committee, and through other interactions with charities and the public.

Our new publication, *Charities in the International Context*, adds to this body of knowledge. A description of this publication, and its Web site address are included in the "What's new" section.

We are committed to developing policies on topics that are important to the charitable sector. This newsletter includes information on our two most recent draft policies, on public benefit and on applicants assisting ethnocultural communities in Canada. It also includes information on some of the draft policies that we expect to make available over the next year. Draft policies are made available for public comment as part of the policy development process. We appreciate comments received from the charitable sector as a way to improve these documents before they are finalized.

If you have questions that you think would be good for the "Did you know?" section, or ideas for articles that could be included, please contact us with your suggestions at: **charities-bienfaisance-bulletin@cra-adrc.gc.ca**.

## Facts and figures

### Charities working internationally

For fiscal years ending in 2002, [1] 15% of charities reported carrying on programs outside Canada.

[1] These numbers are based on data available as of May 2004, from charity information returns (T3010) for fiscal years ending in 2002. A total of 11,993 charities from this group reported working outside Canada.

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Of these charities, 35.8% reported that they carried on their own programs outside Canada, and these expenditures exceeded $1.4 billion. [2]

The 10,792 charities that reported the region in which they did charitable activities outside Canada, reported as follows:

- 56% reported working in one area;
- 12% reported working in two areas;
- 9% reported working in three areas;
- 6% reported working in four areas; and
- 17% reported working in five or more areas.

Charities reported activity in these areas of the world:

- United States and Mexico – 28%
- Central America, Caribbean, and Antilles – 24%
- South America – 22%
- Western Europe – 14%
- Central and Eastern Europe – 19%
- Australasia – 9%
- South Asia – 16%
- China – 9%
- Other Asian countries – 18%
- Eastern and Southern Africa – 21%
- Northern, Central, and Western Africa – 22%
- Middle East – 14%

Due to rounding and because many charities working overseas carried on programs in more than one of the listed areas, the numbers do not add up to 100%. There was no significant change over the period for which this information was available (1997 to 2002).

## What's new

### New online publication – *Charities in the international context*

Canada's *Income Tax Act* requirements apply to Canadian registered charities no matter where they operate. These rules allow charities to operate either by engaging in their own charitable activities or by giving resources to qualified donees.

Charities working abroad may face situations not faced by charities operating only in Canada. For example, they may operate in areas where the political atmosphere is uncertain, complex, or dangerous. As a result, there are additional issues that charities operating abroad need to consider when setting up their operations.

The Charities Directorate published a guide called *Registered Charities: Operating Outside Canada* (RC4106), to address the concerns of charities operating abroad. Since then, Canada has made a commitment to drawing the charitable sector's attention to best practices papers that are available from international sources.

It is important that charities follow international standards of best practice to make sure their resources are used for charitable purposes. The paper called *Charities in the International Context* identifies many sources for such information. It outlines the steps Canada has taken in its commitment to best practices. It also provides links to information on how Canada and other members of the Financial Action Task Force are working to fight terrorism. You can get a copy of this paper at **www.cra.gc.ca/tax/charities/international-e.html**.

### United Kingdom's draft *Charities Act*

The United Kingdom has posted its draft *Charities Act*, published by the Home Office on May 27, 2004. The bill and explanatory notes can be found at: **www.parliament.uk/bills/draftbills.cfm**.

If enacted, this bill will institute a statutory definition of charity for the purposes of the law in England and Wales for the first time.

## Did you know?

### Disbursement Quota (DQ) listed in *Notice of Confirmation* (NOC)

**Q. On our NOC it looks like our organization has a shortfall in its DQ, but I know that we have an excess from previous years. Why is this?**

A. A NOC gives only the calculation of excess or shortfall for the current year. A charity may have a shortfall in a particular year, but due to excesses in previous years, still meet its DQ.

In the future, the Canada Revenue Agency (CRA) plans to have the amount calculated, taking into account previous years' excesses or shortfalls. At present, we can only confirm the excess or shortfall during a particular year on the NOC that is sent to charities. However, it is possible to look at overall excesses and shortfalls internally, to check that a charity meets the requirements of the *Income Tax Act*.

[2] The sum of all total direct expenditures outside Canada (Line 640) is $1,412,965,067. The returns for 77,579 of the 80,640 charities registered in 2002 were available for analysis. Of the 4,300 that responded that they had made a direct expenditure to conduct programs outside Canada, 3,400 gave a dollar amount.

Charities should also be aware that the NOC is based on the information provided by the charity. If the information a charity supplies to the CRA is incorrect or incomplete, the NOC will reflect this. Charities are responsible for verifying the accuracy of their annual information returns. In particular, we have noticed that lines 5000, 5010, 5020, 5030 and 5040 are not completed by some charities.

If you have omitted information required to properly calculate the disbursement quota, please complete Form T240, *Registered Charity Adjustment Request*. The form is available on our Web site or by calling us toll free at 1-800-267-2384 (English) or 1-888-892-5667 (bilingual).

## Information on agency agreements with Canadian organizations

**Q. Where can we find information on agency agreements with Canadian organizations?**

**A.** See RC4106, *Registered Charities: Operating Outside Canada*. Its information on agency agreements, joint ventures, and similar arrangements applies to relationships within and outside Canada.

## Working outside Canada

As part of a recent review of a sample of applications, the Charities Directorate examined the number of applicants involved in work outside Canada. The review showed that applicants working outside Canada tended to fall into four groups of approximately equal size:

- economic/sustainable development;
- religious organizations;
- health; and
- basic amenities of life,

with many operating under a structured arrangement of some sort.

The review also revealed that the main issue in approving such applications is whether the organization maintains sufficient control over its resources.

In some cases, problems related to control of resources or permissible activities may arise for charities that are already registered. Many questions on charities working outside Canada are answered in RC4106, *Registered Charities: Operating Outside Canada*, which is available on our Web site at: **www.cra.gc.ca/E/pub/tg/rc4106/rc4106-e.html**. In this newsletter, we have included some of the most frequently asked questions including ones not answered in that publication.

In many cases charities working outside Canada would be well advised to obtain professional advice to ensure that they are protected in their dealings.

## Definitions [1]

**Agent** – An individual or organization that acts as the charity's representative in carrying out specifically identified tasks for the charity.

**Contractor** – an individual or organization hired to provide a good or service to the charity (or its agent) that is needed to carry out the charitable program of the charity.

**Intermediary** – a person or organization that acts as a medium through which a charity can accomplish its purposes.

**Joint venture** – where resources are pooled between a charity and another (which may be a non-qualified donee, a charity, or another organization) to establish and operate a charitable program.

**Co-operative partnership** – Different parties take responsibility for different aspects of the charitable project being undertaken.

**Acting as a conduit** – forwarding money to organizations that are not qualified donees.

**Qualified donees** – Organizations that can issue official donation receipts and to which Canadian registered charities can disburse funds.

**Listed entities** – Under the *Anti-terrorism Act*, a group or individual associated with terrorism.

## Board of directors

**Q. Does the requirement that a charity be resident in Canada require that a majority of its board of directors be Canadian residents for income tax purposes?**

**A.** Section 248(1) of the *Income Tax Act* requires that a registered charity reside in Canada, and that it be created or established in Canada. However, how the rules concerning residency apply differs according to the way the charity has been structured. For example, whether it is incorporated or governed by a legal document that creates a trust or by a constitution, and whether it is "a branch, section, parish, congregation or other division of an organization".

The residency requirement for charities and some other rules, notably those dealing with charities having to keep books and records in Canada or with restricting fund transfers to qualified donees only, suggest that registered charities ought to have a significant Canadian presence. However, in the case of corporations, the general provisions of the *Income Tax Act* concerning corporate residency (ss 250(4)) deem any corporation (charitable or not) to be residing in Canada simply if it was incorporated in Canada.

[1] **Disclaimer**: These definitions are shortened versions of ones available in the *Income Tax Act* or through CRA publications, and are provided for easy reference.

If there is no incorporation, the requirements can be different.

For example, in general, a trust is resident in the country where the majority of its trustees are resident.

However, an unincorporated association is a "person" for the purposes of the *Income Tax Act*, and would likely be resident where its central management and control resides.

## Purposes and activities

**Q. What is meant by the requirement that a charity be "carrying on its own activities"?**

**A.** This means the charity is an active and controlling actor in a program or project achieving a charitable purpose. For example, a charity is carrying on its own activities when it is:

- awarding a scholarship for a student selected through a program administered by the charity;
- providing medical services to the sick; or
- doing missionary work.

These activities can be carried on by employees or volunteers directly funded by charity. They can also be carried on through intermediaries under some conditions, e.g., where the charity retains direction and control over the use of its resources through a formal structured arrangement with the intermediary.

**Q. Is there a limit on how much activity a registered charity can carry on outside Canada?**

**A.** No. However, regardless of the amount of activity a charity carries on outside Canada, it must be resident in Canada to be a registered charity.

**Q. Are there activities that are charitable in Canada but not charitable abroad?**

**A.** Yes. For example, reducing another country's national debt or supporting its armed forces is not charitable.

As well, charities should be aware that some policies available through the Charities Directorate focus only on activities within Canada, or note additional restrictions where activities take place outside Canada or involve organizations outside Canada. For example, the policy on ethnocultural organizations discussed in the policy section of this newsletter relates to charities operating in Canada.

**Q. When working in another country, do activities have to be charitable according to Canadian standards, or do the local standards apply?**

**A.** Activities must be charitable according to Canadian standards.

Generally, the purposes for which such an organization is created cannot conflict with the laws of the other country, and are considered charitable by that country.

**Q. Can a charity be set up to benefit a community in another country?**

**A.** Yes, on condition that its purposes are stated in its governing documents and its purposes and activities meet the requirements described in the Charities Directorate's publications.

**Q. Can a charity be set up to benefit a government in another country?**

**A.** No. Registered charities cannot directly benefit other countries' governments.

**Q. Can a charity be set up to support an organization in another country?**

**A.** A registered charity cannot be a conduit. That is, it cannot hand over its money or other resources to another organization that is not a qualified donee. It may not issue official receipts for income tax purposes for gifts it receives, and then simply forward those monies to an organization that is not a "qualified donee". A charity that acts in this way may be de-registered, and an applicant that proposes to operate in this way will not be registered. This is the case whether or not the proposed beneficiary resides in Canada.

However, charities can work with others through joint ventures and similar arrangements, as described later in this newsletter.

**Q. Are there any circumstances under which a Canadian registered charity can transfer property directly to a non-qualified donee?**

**A.** As above, a charity cannot simply transfer funds to an organization that is not a qualified donee, since this does not qualify as carrying on its own activities.

However, the Charities Directorate will consider a transfer of property reasonable where the nature of the property means that it can only be used for a charitable purpose. For example, it is generally reasonable to assume that a copy of the Bible will be used for religious activities, that medical equipment will aid the sick, and that student books will be used for educational purposes in a school.

In some cases, where the property could be used for something other than charitable purposes, it may none-the-less be unreasonable to expect the charity to maintain control of assets. The Charities Directorate will consider such situations on a case-by-case basis when requests are received in writing.

**Q. Can building and maintaining a building used for charitable purposes be considered charitable?**

**A.** If the Canadian charity is responsible for building a public facility and maintains title to the facility, and can make sure it is used only for charitable purposes, it has satisfied the requirements for the *Income Tax Act*. Public facilities generally include a library, bridge, or religious centre.

On the other hand, if there are legal impediments to the Canadian charity constructing or holding title to real property in a foreign country, the Canadian charity should get a letter from the country's embassy or consulate to confirm the law in this matter. In such circumstances, the Charities Directorate will accept that title to the facility vests in a body other than the Canadian charity, if:

- it can be demonstrated that the facility is being built and will be used indefinitely for exclusively charitable purposes; and
- title to the facility vests either:
  - in a locally recognized charity (proven by a letter from the appropriate authority that regulates charities in the foreign country); or
  - in a government body.

The written agreement implementing such a project should include a clause stipulating the title-holding arrangements for each capital property undertaking.

**Q. Under what circumstances can a Canadian registered charity pay tithes, memberships, or similar fees to an organization that is not a Canadian registered charity?**

**A.** Payments to related organizations are only acceptable where the amount paid by charity is proportional to the benefit it receives. For small amounts—that is, the lesser of 5% of total expenditures or $5,000—we are generally willing to accept that the Canadian charity is receiving value for its payments. For more information, see RC4106 *Registered Charities: Operating Outside Canada*.

**Q. Can trademark and/or copyright licence agreements involve payments to a head organization outside of Canada that exceed the above-mentioned limits where the charity receives something of equal or greater value in return?**

**A.** In all cases, the charity must be able to establish that the Canadian charity is receiving a benefit that is proportional to the amount it pays. The limit of the lesser of 5% of total expenditures or $5,000 refers to the point at which we are generally willing to accept that a charity is receiving value for its payments without receiving further proof.

## Working with others

**Q. Can charities employ local staff to work on projects abroad?**

**A.** In working on projects abroad, a charity may choose to send employees from Canada to engage in the work or employ local staff.

**Q. How can charities work in partnership with others?**

**A.** A Canadian charity can work with a foreign organization but under the *Income Tax Act* it is not allowed to transfer funds wholesale to such an organization. The Canadian charity needs to retain control and responsibility over the funds in question. Sometimes it is not practical for a charity to use its own employees or volunteers to carry out these activities abroad. In such a case, a charity can work through other organizations providing it employs certain structured arrangements that allow it to retain direction and control over the use of its resources.

A charity's activities outside Canada are often necessarily carried out through local partners or local workers. If a charity uses such third parties or intermediaries to deliver its programs, it must exercise sufficient control to meet the *Income Tax Act* requirements. Generally speaking, it cannot simply transfer money outside Canada.

**Q. What are some examples of intermediaries?**

**A.** There are many types of arrangements through which a charity may act with an intermediary. For example, the charity may work with:

- **Agents** – In which case an agency agreement is generally required. Charities should be aware that they may expose themselves to significant liability.
- **Contractors** – To whom the charity should provide precise instructions.

or through arrangements such as:

- **Joint ventures** – In which organizations pool resources.
- **Co-operative partnerships** – In which each partner takes responsibility for parts of the project.

**Q. Are there other arrangements whereby charities can carry out charitable activities jointly other than through joint ventures and co-operative partnerships referred to in guide RC4106?**

A. Yes. For example, some religious charities work through a joint ministry agreement.

The key is that the charity must be able to ensure that all its resources are devoted to charitable purposes.

Charities considering arrangements other than those mentioned in guide RC4106 can contact the Charities Directorate to be certain that such an agreement allows the charity to meet the requirement that it be an active and controlling participant.

**Q. What factors should a charity consider when choosing the type of arrangement it has with another organization? Can registered charities be held liable for the acts of their agents?**

**A.** Arrangements differ in the amount of control they give a charity. The charity must maintain sufficient control to ensure that its resources are devoted to charitable purposes. The amount of control will vary by the nature of the resources being used, and the characteristics of the foreign organization. More information on these considerations is available in guide RC4106.

Charities also need to recognize that under some of these arrangements, they may find themselves liable for the actions of employees, agents, or partners.

**Q. Are there steps that charities can take to reduce their exposure to liability when becoming involved in an agency relationship?**

**A.** Charities can seek legal advice on steps that can be taken to reduce this risk. Charities may want to consider risk management procedures such as indemnification provisions, as well as reviewing the adequacy of general liability and director and officer liability insurance where such insurance is possible.

## Financial controls – Books and records

**Q. Are there special requirements for books and records where a charity operates outside Canada?**

**A.** The minimum requirement is that they contain enough information for us to determine if the charity is operating according to the *Income Tax Act*.

Project reports should be supported, for example, by:

- copies of written agreements;
- copies of deeds;
- financial statements;
- copies of invoices;
- photos;
- minutes of meetings; and
- advertising, or other material that shows a charity's involvement.

Books and records must be kept at the Canadian address.

**Q. Are there other financial controls or record-keeping requirements for charities working outside Canada through organizations that are not qualified donees?**

**A.** Our guide, *Registered Charities: Operating Outside Canada*, RC4106, describes the additional financial controls and record keeping requirements for charities operating outside Canada.

If a registered charity carries out its own charitable activities through an intermediary, it must be able to demonstrate that it keeps **direction** and **control** over the use of its resources. It is generally preferable for the charity to have a formal written agreement with the intermediary.

**Q. How often should progress reports be sent?**

**A.** The frequency of filing progress reports depends, in part, on the frequency with which funds are transferred. Payments made by instalments should be made after confirmation of reasonable progress and that the resources provided have been applied to the activities outlined in the agreement. Many charities have these reports filed quarterly.

**Q. Should a charity keep its books and records in one of Canada's official languages even if it is working through an intermediary that does not work in either English or French?**

**A.** Yes. Whether or not it works outside Canada, a charity has to keep adequate books and records at a Canadian address, so that we can verify official donation receipts issued, as well as income received and expenses made. We ask that these be kept in English or French. Books and records can be translated from the ones received from the intermediary if they were presented in a language other than English or French. However, we recognize that for some small charities this may become a significant burden. We are willing to consider such situations on a case-by-case basis.

Charities should be aware that they may also be required to keep adequate books and records in English or French in Canada under ss286(1), for example if they are considered persons carrying on a business or engaged in a commercial activity in Canada, persons who are required to file a GST/HST return, or persons who make an application for a rebate or refund.
**(www.cra-arc.gc.ca/E/pub/gm/15-1/15-1-e.htm#P61_2044)**

## Disbursement quota (DQ)

**Q. How does working abroad affect the calculation of a charity's disbursement quota?**

**A.** The disbursement quota requirement is the same whether or not a charity works outside Canada. A description of amounts that can be included in charitable disbursements is included in guide RC4106.

Although the requirements are the same, calculating the amount that can be used to satisfy the disbursement quota can be more complicated for charities working jointly or in partnership with another organization, as is often the case for charities that work outside Canada. As described in guide RC4106, one acceptable approach in these cases is to assume a proportionate amount of overhead costs as is found in the project or program as a whole.

For example, if 90% of a joint venture's resources were devoted directly to charitable work and 10% to overhead, a Canadian charity contributing to this project would use 90% of the amount it contributes towards meeting its disbursement quota.

## Disasters

**Q. Are there special arrangements for charities that are being set up to deal with a particular disaster?**

**A.** Yes. For organizations responding to particular disasters in both Canada and abroad, the Charities Directorate recognizes that there can be a need to respond quickly.

Such charities need to file the same application form and meet the same requirements that other applicants do. However, the Charities Directorate has an officer specifically responsible for these applications. When the Charities Directorate's Client Assistance section receives requests for information on setting up these organizations, they are forwarded to this officer. Applications that require immediate attention, because of the nature of the disaster, are assigned to this officer as well. Applicants are given information directly related to disaster relief. This includes information on how to establish the organization and the types of purposes and activities that may be considered charitable.

**Q. Can a charity get permission to accumulate funds so that it can be ready to respond immediately when a disaster occurs?**

**A.** Yes. We can grant permission to a charity that wants to accumulate funds to allow it to act quickly in cases of disaster.

We recognize that disaster-relief funds are sometimes set up in response to specific disasters, and sometimes in anticipation of disasters. In the latter case it is sometimes necessary to have accumulated funds in order to respond rapidly in fulfilment of the charity's purpose. This permission is for a limited period of time, but may be extended on request.

## Anti-terrorism legislation

**Q. Does Canada's anti-terrorism legislation apply to charities that operate outside of Canada?**

**A.** Yes. The Canadian charity is responsible for making sure that its activities comply with this legislation whether they take place inside or outside Canada.

**Q. How do the provisions of the *Charities Registration (Security Information) Act* affect charities?**

**A.** Countering terrorism is a complex issue. The Government of Canada recognized that criminal measures alone are not enough and that a broad range of tools are needed, including new civil law remedies. The *Charities Registration (Security Information) Act*, introduced a special administrative measure that helps the Charities Directorate meet its regulatory responsibilities without affecting the vast majority of Canadian charities.

The legislation provides a process to disqualify an organization from registration as a charity where there are reasonable grounds to believe, based on criminal and security intelligence information, that an organization makes its resources available, either directly or indirectly:

- to a terrorist group that is a listed entity under the *Criminal Code*; or
- to any other organization engaged in terrorist activities or in activities that support terrorist activities.

Information about the *Charities Registration (Security Information) Act* is on the Web site of Public Safety and Emergency Preparedness Canada at **www.psepc-sppcc.gc.ca/national_security/counter-terrorism/AntiTerrorism_e.asp**. The site includes a link to a list of listed entities.

Aiding and abetting a listed entity disqualifies an organization from being a registered charity and criminal penalties will apply to individuals and organizations that do so.

**Q. Do charities that operate outside of Canada need to be concerned about compliance with anti-terrorism legislation in those countries?**

**A.** Yes. Charities need to be aware of all laws in the countries in which they operate.

## Impact of court cases from other countries

**Q. How do Canadian courts regard court cases from other countries when looking at charity law decisions?**

**A.** The Charities Directorate refers to the common law when it has to decide whether an activity is charitable. Common law is the body of law as it has evolved over time through court decisions, primarily in England and Wales, Canada, and some other Commonwealth countries. Common law may be distinguished from statute law which is created solely by legislation.

As Canadian charity law developed from the British tradition, many of the precedents that we refer to today are English in origin. For example, we often refer to the four heads of charity, a reference to the case of *Commissioners for Special Purposes of the Income Tax v. John Frederick Pemsel*, [1891] A.C. 531 (P.C.), in which Lord Macnaghten categorized charitable purposes into four general headings, sometimes called the Macnaghten categories. The categories are:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; and
- other purposes beneficial to the community (not falling within the three preceding headings) which the law recognizes as charitable.

In 1949, the Supreme Court of Canada became independent from the Judicial Committee of the Privy Council (JCPC). Decisions brought before the JCPC before this were binding on Canadian courts. Thereafter, decisions from cases brought before the JCPC were no longer binding on Canada.

Although decisions of courts of other jurisdictions are not binding on Canadian courts, a court may choose to follow such a decision if it is persuasive. The weight to be given to a decision from another jurisdiction will depend on the status of the court, the similarity in the facts of the case, and whether or not there are similarities in the law to be applied.

One example of a Canadian court looking to other jurisdictions is that of the Federal Court of Appeal in *Native Communications Society of B.C. v. Canada* (M.N.R.)(F.C.A.), [1986] 3 F.C. 471. Lacking Canadian charity law examples dealing with aboriginals, the Court referred to a case from Australia, *In re Mathew* [1951] V.L.R. 226, to reach its decision. The purposes of the Society, broadly stated, were to establish broadcast facilities and to publish a non-profit newspaper tailored to the needs of B.C.'s native communities for the purpose of cultural preservation, information, education, and training particularly in communications. The Court stated that the case could not be decided without considering the special legal position that aboriginal people occupy in Canadian society.

A recent Canadian decision, *Fuaran Foundation v. CCRA*, has confirmed as Canadian law the principally English jurisprudence that we use to determine whether an organization operating a retreat centre is advancing religion in the legal charitable sense. This case is summarized below.

## Court news

Decisions of the Federal Court of Appeal (FCA) are available at: **www.fca-caf.gc.ca/index_e.shtml**.

### FCA rules that advancement of religion requirements not met

On May 4, 2004, the *Federal Court of Appeal* ruled that the CRA was correct in refusing to register the Fuaran Foundation (the Foundation) as a charity under the *Income Tax Act*. [4] The Court found the CRA was correct in finding the Foundation was not advancing religion in the legal charitable sense and therefore did not qualify for registration as a charity.

The main activity on which the appellant relied to establish its rights to charitable status was the support and operation of a Christian retreat centre in Great Britain. The CRA refused registration for two main reasons. First, the language of the organization's constitution was so broad as to allow it to undertake non-charitable activities. Second, it was not clear whether the primary activity involved conducting religious retreats or merely the operation of a "resort".

The Court looked at the reasoning that was used in *Vancouver Society* [5] to show that advancing education requires a structured program, and applied this reasoning to the advancement of religion. The Court noted the lack of a structured program relating to the advancement of religion in this case.

> [14] The analysis of *Iacobucci J. in Vancouver Society*, although the Court was dealing with the "advancement of education", would presumably apply also to "advancement of religion".
>
> *To my mind, the threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others, whether through formal or informal instruction, training, plans of self-study or otherwise. Simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough ...*

Simply making activities available is not enough. There must be a concerted effort to advance religion.

### FCA confirms that block discounts are a valid part of valuations

In *Canada v. Malette*, the FCA (2004 FCA 187) allowed the Crown's appeal of a decision of the Tax Court of Canada (2003 DTC 1078) which had held that a discount could not be applied in valuing works of art that had been donated in bulk because subsection 118.1(1) of the *Income Tax Act* requires each donated object to be valued individually. The FCA confirmed that block discounts reflect supply and demand. [6] Based on this, discounts are valid in determining the value of individual items that form part of a block donation. The FCA concluded that this was an appropriate situation in which to apply such a discount.

[4] *Fuaran Foundation v CCRA*, A-496-02, 2004-05-04

[5] *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, 99 DTC 5034.

[6] "[16] The need to apply such a discount is a function of supply and demand. When, for any reason, a large number of personal property items come on the market at the same time, a depressive effect on the value of the individual items can occur due to the fact that the number of items offered for sale exceeds the number of willing buyers. The difficulty usually lies in determining whether the circumstances justify the application of such a discount, and if so, in determining the extent of the discount to be applied."

## Policies

We are pleased to have available for public comment draft policies on public benefit and on applicants assisting ethnocultural communities in Canada. For more details on these policies, see the related headings below.

There are also several new draft policies that we expect to have available over the next few months. These include:

**Decision-making process for public benefit** – To complement the new draft policy on public benefit, the Charities Directorate will also release, in draft, a description of its decision-making process for determining charitable status under the *Income Tax Act*. In the March 2004 federal budget speech, the Government of Canada outlined an agenda for reform of the federal regulation of charities. Part of the agenda included measures for improving the legislative and regulatory environment within which the charitable sector operates. One such measure involves the provision of more accessible information regarding policies, decisions, and regulatory requirements for registered charities. This draft policy will provide an overview of the decision-making process, to help the public to understand how we exercise our authority in determining what is charitable under the law.

**Sports-related applicants** – The promotion of sport has not been recognized by the courts as charitable. This means that, unless sport is used to further a charitable purpose, sports-related applicants do not quality for registration. For example, sport that is part of a school curriculum meets this criterion, as do youth programs and community facilities that organize sports as an incidental activity. Other examples include sport-related programs that help seniors or persons with disabilities. A new policy to clarify the guidelines for sport-related applicants will also outline how sport potentially furthers the charitable purpose of promoting health.

**Umbrella organizations** – These are organizations that support the charitable sector by promoting the efficiency and effectiveness of registered charities, or who advance a charitable purpose by working with and through member groups. The draft policy will discuss which umbrella organizations can qualify for registration.

**Research as a charitable activity** – This policy will provide information and advice on the requirements that need to be met in order to engage in research as a charitable activity, based on general principles derived from charity law. The policy will distinguish charitable research from activities not regarded as research in the charitable sense. It will address the public benefit aspects of charitable research such as the requirements that the research undertaken be of real value, and that useful knowledge be acquired and disseminated via the publication of the research results or through the practical application of the research. In addition, it will offer guidance on how a charity might satisfy these requirements. Matters such as the methodology, ethics, private benefit, commercial exploitation, as well as the protection and exploitation of intellectual property rights arising out of charitable research will be discussed.

### Draft guidance on applicants assisting ethnocultural communities in Canada

Canada is a country that recognizes the many contributions made by immigrants and refugees. Our policies also acknowledge the contributions made by the many cultural communities that call Canada home. However, reports such as the one by the Broadbent Panel (1999) have expressed concern about the ability of the voluntary sector to respond to emerging public needs, including those that result from our changing demographics.

Charities play a vital role in meeting the needs of disadvantaged ethnocultural communities, and in assisting refugees and immigrants in need to make the transition to life in Canada. The charitable sector's ability to respond is particularly important given the evidence of the growing racialization of poverty identified in some recent studies.

The Charities Directorate has recently made available a draft policy on the registration of applicants who assist ethnocultural communities in Canada. By developing clearer charitable registration guidelines, we hope to promote a better understanding of what types of organizations may be registered within the parameters defined by charity law and the *Income Tax Act*.

The draft policy takes into consideration the many goals and undertakings of ethnocultural organizations in Canada, and outlines how organizations that help a disadvantaged ethnocultural community or communities are potentially eligible for charitable registration. It reviews which of the objects and activities of these organizations may be considered charitable, and which are not.

The draft policy is available for consultation until the end of November 2004. You can find a copy of the proposed policy on the "Consultation on proposed policy" page of the Charities Web site (see the contact information on the last page of this newsletter for the address). You can also get a copy of this draft policy by calling our toll-free Client Assistance number. After the consultation period, we will use your input to revise the policy.

### Draft guidance on public benefit

The principle of public benefit is a key part of every determination of charitable status by the Charities Directorate. When reviewing applications for charitable registration, examiners have to make sure that organizations fit within the definition of charity at common law. One element of that definition requires that an organization's purposes and activities be for the "public benefit" or, put another way, have a sufficiently public character. Determining this can be a

difficult task. The case law is complex, and the tests that have been developed through the courts over the years are often difficult to apply.

Many questions have been raised about the clarity, consistency, and reasonableness of the rules relating to public benefit. At the same time, it has become increasingly important to understand what we mean in theory and practice. This issue became one of the first priorities for review by the Policy Development Section of the Charities Directorate, a group established in early 2002. We have introduced draft guidelines to clarify the meaning of public benefit as we understand and apply it to determinations about charitable status under the *Income Tax Act*.

We hope that by publishing these draft guidelines, intended for broad-based consultation, we will clarify some of the requirements under the law for organizations that want to be recognized as charitable. The draft guidelines start with a general overview of some of the fundamentals of charity. We briefly describe the theory behind, and application of, the two-pronged test for public benefit. We describe what we mean by the words **public** and **benefit** based on our understanding of the law, and we explain how we apply that understanding to the application process. Included in the guidelines is a discussion of some key questions in this area, many of which arise in the context of who can benefit from the charitable activity:

- What constitutes a sufficient segment of the community?
- When can an organization restrict benefit to a narrow group of beneficiaries?
- To what extent can individuals benefit privately?

Other questions arise in the context of the type and character of the benefit that is proposed:

- How important is it that the benefit be tangible or direct?
- If a benefit is recognized as charitable, is it always so or can it lose its charitable character?

The draft guidelines are available for consultation until December 31, 2004. You can find a copy of the guidelines, along with other publications for consultation, on the "Consultation on proposed policy" page for charities on our Web site (see the contact information on the last page of this newsletter for the address). You can also order a copy of the guidelines by calling our toll-free Client Assistance number.

## Contact information

You can call us toll free at 1-800-267-2384 (English) or 1-888-892-5667 (bilingual).

You can also write to us at:

Charities Directorate
Canada Revenue Agency
Ottawa ON  K1A 0L5

You can contact us by e-mail for comments or suggestions

- about the newsletter at:
  **charities-bienfaisance-bulletin@ccra-adrc.gc.ca**
- about draft publications at:
  **consultation-policy-politique@ccra-adrc.gc.ca**
- about the Road Show at:
  **information.sessions@ccra-adrc.gc.ca**
- about the Web site at:
  **Charities-Bienfaisance@ccra-adrc.gc.ca**

You can contact the Charities Representative at 1-866-303-0316 toll-free, or 948-8608 in the greater Ottawa area or by email at: **charities-bienfaisance-resource@ccra-adrc.gc.ca**

You can find all our publications at: **www.cra.gc.ca/charities/**

Draft publications for consultation are available at:
**www.cra.gc.ca/tax/charities/consultation_policy-e.html**

For information on new additions about charities, see the "What's new" page at:
**www.cra.gc.ca/tax/charities/whatsnew/whatsnew-e.html**

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